REMARKS

Claims 12-14, 16-22, 26-29 and 33-38 are pending. No claim amendments are made herein.

Claims 12-14, 16-22, 26-29, and 33-38 remain rejected under 35 USC § 102 (b) as being anticipated by Soma et al (US 5,494,819), as evidenced by Inagawa et al (Homeostasis as regulated by activated macrophage. II. LPS of plant origin other than wheat flour and their concomitant bacteria, Chem. Pharm. Bull. 40 (4) 994-997, 1992). (Office Action, page 2)

The applicant respectfully rebuts the rejection over Soma and Inagawa by showing that fermentation cannot biologically occur according to the disclosure of these two references.

In Soma, the sentence "The solution was cultured" (col. 5, line 53) is technically wrong, because any solution must not be cultured. Since the sentence should read, "The solution was shaken" (the original Japanese sentence intends this) or "Bacteria were cultured," it is apparent that the sentence is an erroneous translation. (Scientists sometimes describe "to culture" as a generalized expression when he/she considers using a concussion (shaking) incubator. Even if he/she uses inanimate being, he/she can describe it as "to culture.") In this case he/she means "to concuss" or "to shake" when using the generalized term "to culture."

In the case of Soma, since the Example 1 solution contains only "Canadian wheat" (col. 5, line 49) and "distilled water" (col.5, line 50), the ***solution is, in fact, too oligotrophic to culture bacteria*** even if it is in a water bath at 37°C. It is easy for a person who knows wheat flour to understand "50 mg/ml aqueous solution of wheat flour" (col. 5, lines 51-52) cannot culture bacteria. It is well known that simple wheat flour and water will not culture. Thus Soma cannot be interpreted as teaching culturing, when in fact a culture cannot biologically occur.

Further, it is apparent that the process is not culturing because the colonies are observed only at 8 hours and 10 hours in 0 to 45 hours and it means that the bacteria did not grow proliferously.

Furthermore, it is apparent that the process is not culturing because observation of colonies is tried even at 0 hour.

Generally, one needs to isolate the bacterium from the "Bacteria-providing sources" (col. 3, line 10) before culturing the bacterium. The process, ***"(T)he solution was cultured in a water***

bath at 37°C while shaking," (col. 5, lines 53-54) is to isolate the bacteria from wheat four (col. 3, lines 16-19). And the isolated bacteria are cultured in "standard agar culture media available from Nissui Seiyaku Co. in Japan" (col. 5, lines 57-58) to determine the number of living cells and to observe the colonies. The standard agar culture media, which culture the bacteria, contain "Peptone" (in the table in col. 5, line 65) and the ***Peptone is animal protein***. Only under proper minimum conditions will the culture biologically occur.

Therefore as shown above, Soma fails to disclose "culturing ... bacterium in a medium containing no component derived from an animal" (the present claims 12, 26 and 33) because the ***actual culturing in Soma occurs with animal components***. Inagawa does not compensate for the deficiency in Soma described above.

In light of this showing, it is respectfully requested that the rejection be reconsidered and withdrawn.

In view of the above remarks, applicant believes the pending application is in condition for allowance.

The Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 04-1105.

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Respectfully submitted,

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